Supreme Court, U.S.
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No. 91-712

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

UNITED STATES OF AMERICA,

Petitioner,

v.

HUMBERTO ALVAREZ-MACHAIN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED MEXICAN STATES AS *AMICUS CURIAE* IN SUPPORT OF GRANTING REVIEW

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TABLE OF AUTHORITIES

CASE:

United States v. Verdugo Urquidez, 939 F.2d 1341 (9th Cir. 1991), *cert. pending*, No. 91-670 5,6

TREATY:

Extradition Treaty between the United States of America and the United Mexican States with Appendix, done in Mexico May 4, 1978, entered into force January 25, 1980 U.S.T. 5059, T.I.A.S. No. 9656 ..... *passim*

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Pursuant to Rule 37 of the Rules of this Court, the United Mexican States (Mexico) respectfully submits this brief as *amicus curiae* to urge the Court to grant the petition for a writ of certiorari and to review the effect of the United States' violation of its extradition treaty with Mexico upon the administration of criminal justice in the United States.

Both the petitioner and the respondent have consented to the submission of this brief, and their written consents have been lodged with the Clerk of the Court.

INTEREST OF THE *AMICUS CURIAE*

Respondent Humberto Alvarez-Machain is a national of Mexico. He is a physician who specializes in obstetrics and gynecology, and he maintains a medical practice in Guadalajara, Mexico. In early-April 1990, United States law enforcement officers arranged for the respondent's abduction from Mexico and brought him to Los Angeles to stand trial on charges preferred against him and others in connection with the 1985 killing of a United States law enforcement agent, Enrique Camarena, in Mexico.

Respondent's covert and forcible abduction from Mexican territory was in direct contravention of the extradition treaty between Mexico and the United States.[1] Mexico repeatedly protested to the United States government the treaty violation, the infringement of its sovereignty and the violation of its territorial integrity. Mexico has a manifest interest in ensuring that treaties to which it is a party are interpreted and applied by the courts of its treaty partners consistently with the express terms of the treaty and in the light of their object and purpose.

It is common ground between Mexico and the United States that if the respondent is criminally implicated in the American law enforcement agent's death, he should be prosecuted. The extradition treaty, however, does not permit the United States unilaterally to determine that the prosecution of the respondent take place in the United States, nor does

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[1]Extradition Treaty between the United States of America and the United Mexican States with Appendix, done in Mexico May 4, 1978, entered into force January 25, 1980 U.S.T. 5059, T.I.A.S. No. 9656.

the treaty—as well as other related international agreements between the two States that have a direct bearing on respondent's abduction—allow United States authorities to resort to extralegal means to secure respondent's presence for trial in the United States. The United States' disregard of its solemn international commitments does not serve to uphold or advance the rule of law in international relations to which both Mexico and the United States are strongly committed. Mexico believes that its views on the violation of the extradition treaty and the attendant violation of its sovereignty and its territorial integrity which occurred in this case should be before the Court when it considers the instant petition.

STATEMENT

Respondent challenged the district court's personal jurisdiction over him on the grounds, *inter alia*, that the manner in which the United States secured his presence before the court violated the Mexico/United States extradition treaty when the United States unilaterally abducted him from his homeland. (Pet. App. 4a).

The district court conducted an extensive evidentiary hearing on the question whether United States law enforcement officials were responsible for respondent's forcible abduction from Mexico. (Pet. App. 6a). Although the United States denied that it had participated in the abduction, the court determined that prior to his abduction, the United States Drug Enforcement Agency (DEA) had unsuccessfully attempted to secure respondent's presence in the United States through informal negotiations with Mexican police authorities. (Pet. App. 7a-9a). The dis-

trict court found that, in the evening of April 2, 1990, respondent was seized by five or six armed men in his office in Guadalajara, put by force on a private plane, and flown to El Paso, Texas, where he was met by DEA agents and immediately arrested. He was flown to Los Angeles where the prosecution of seven other suspects in the Camarena case was under way. (Pet. App. 10a-11a). The district court further found that as of May 1991, the DEA had made partial reward payments of $20,000 to the Mexican individuals who abducted the respondent; that the Agency had evacuated seven of the abductors and their families from Mexico to the United States; that it pays for their weekly living expenses (*ibid.*); and, that respondent's abduction did not result from any joint effort by Mexico and the United States, or any authorized participation in the abduction by Mexican officials. The court concluded--

> Rather, the record reveals that earlier negotiations between the United States and known representatives of Mexico for an exchange of fugitives had broken down. When Mexico attempted to revive those negotiations, the United States refused. The United States then unilaterally proceeded with the abduction without the knowledge or participation of the Mexican government. [Pet. App. 33a]

Based on its factual findings, the district court ruled that the United States violated the Mexico/United States extradition treaty—

> when it unilaterally abducted . . . [respondent] from his homeland. Under these circumstan-

> ces, the Court lacks jurisdiction to try this defendant. Accordingly, the defendant is ordered discharged and the government is ordered to repatriate the defendant to Mexico forthwith. [Pet. App. 4a-5a]

The court of appeals affirmed, *per curiam*, on the basis of its earlier decision in *United States v. Verdugo Urquidez*, 939 F.2d 1341 (9th Cir. 1991), *cert. pending*, No. 91-670.[2] (Pet. App. 1a.)

As it did in the *Verdugo* case, Mexico repeatedly protested respondent's abduction through diplomatic channels. In its first note to the United States Department of State of April 18, 1990, the Mexican Embassy in Washington requested a report on the possible participation of United States officials in the abduction of respondent. The note advised the Department of State that "if it is proven that these actions were performed with the illegal participation of the U.S. authorities, the binational cooperation in the fight against drug trafficking will be endangered. . . ." (App. A at 1a).

In its second note of May 16, 1990, the Mexican Embassy informed the Department of State that "[t]he Government of Mexico considers the kidnapping of Dr. Alvarez Machain and his transfer from Mexican territory to the United States of America were carried out with the knowledge of persons working for the U.S. government, in violation of the procedure established in the extradition treaty in force between the two countries." The note concluded by

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[2] Mexico has filed an *amicus curiae* brief in that case in support of granting review.

demanding respondent's return to Mexico. (App. B at 5a).

Mexico's third note to the Department of State of July 19, 1990 requested the provisional arrest and extradition of the two individuals who were principally responsible for respondent's abduction from Mexico, DEA agent Berrellez and a Mexican national who was granted refuge in the United States. (App. C at 9a).

ARGUMENT

Amicus respectfully refers the Court to the argument presented in its brief as *amicus curiae* in support of granting review in *United States v. Verdugo Urquidez, cert. pending,* No. 91-670. The argument applies with a fortiori force to this case, in view of the district court's explicit finding that respondent's abductors were paid agents of the DEA and that the abduction was sponsored by, and accomplished at the behest of, the DEA.

CONCLUSION

Mexico urges the Court to grant the petition for a writ of certiorari to review the effect on the administration of justice in the United States of the petitioner's violation of its treaty obligation to Mexico. Mexico concurs in petitioner's alternative prayer that if the petition is granted the case should be consolidated with *Verdugo*.

Respectfully submitted,

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November 29, 1991.

APPENDIX

APPENDIX A

No. 0336

UNOFFICIAL TRANSLATION

The Embassy of Mexico presents its compliments to the State Department and wishes to refer to the recent aprehension in Mexican territory and transfer to El Paso of the Mexican citizen Humberto Alvarez Machain.

According to the information that the Mexican authorities have, there is the assumption that Mr. Alvarez Machain has been kidnapped in Mexico and illegally transferred to the United States territory, with the participation of U.S. authorities.

Due to the above, the Embassy of Mexico, upon specific instructions from its Government, requests to the Department of State a detailed report and the corresponding clarification about the possible participation of U.S. authorities in Mr. Humberto Alvarez Machain's kidnap and transfer to the United States. The Mexican Government is making a scrupulous investigation about this case.

The State Department is obviously aware that if it is proven that these actions were performed with the illegal participation of U.S. authorities, the binational cooperation in the fight against drug trafficking will be endangered, since, as it is of your knowledge, it is the exclusive responsibility of the Mexican authorities the fight against drug trafficking and criminal organizations within the Mexican territory.

Due to the seriousness of this case, the Embassy of Mexico will appreciate a prompt answer and avails itself of this opportunity to renew to the Department of State the assurances of its consideration.

Washington, D.C. April 18, 1990.

To the Department of State
Washington, D.C.

APPENDIX A-1

No. 0336

La Embajada de Mexico saluda al Departamento de Estado y desea referirse a la reciente detencion en territorio mexicano y traslado a la ciudad de El Paso, del ciudadano mexicano, Dr. Humberto Alvarez Machain.

De acuerdo con la informacion con que cuentan las autoridades mexicanas, existe la presuncion de que el señor Alvarez Machain haya sido secuestrado en Mexico y trasladado ilegalmente a territorio de los Estados Unidos, con participacion de autoridades norteamericanas.

En virtud de lo anterior, la Embajada de Mexico, por instrucciones expresas de su Gobierno, solicita al Departamento de Estado un informe detallado y las explicaciones pertinentes sobre la posible participacion de autoridades norteamericanas en el secuestro y traslado a Estados Unidos del señor Alvarez Machain. Por su parte, el Gobierno de Mexico esta llevando a cabo una minuciosa investigacion sobre este caso.

No escapara al reconocido buen criterio del Departamento de Estado que, de comprobarse la participacion ilegal de autoridades norteamericanas en estos hechos, se pone en peligro la cooperacion binacional en la lucha contra el narcotrafico, pues como es de su conocimiento, corresponde exclusivamente a las autoridades mexicanas la responsabilidad del combate al narcotrafico y a las organizaciones criminales dentro del territorio de Mexico.

Al agradecer al Departamento de Estado una pronta respuesta en virtud de la seriedad de estos hechos, la Embajada de Mexico aprovecha la ocasion para reiterarle las seguridades de su consideracion.

Washington, D.C., 18 de abril de 1990.

Al Departamento de Estado
Washington, D.C.

APPENDIX B

UNOFFICIAL TRANSLATION

The Embassy of Mexico presents its compliments to the State Department and wishes to refer to the apprehension in Mexican territory and the illegal transfer to the United States of Dr. Humberto Alvarez Machain.

The Government of Mexico considers the kidnapping of Dr. Alvarez Machain and his transfer from Mexican territory to the United States of America were carried out with the knowledge of persons working for the U.S. government, in violation of the procedure established in the extradition treaty in force between the two countries.

Accordingly, the procedure followed by the kidnappers and transporters of Dr. Alvarez Machain, was in violation of articles 14 and 16 of the Political Constitution of the United Mexican States, which establishes the right of due process and the equal protection under the law in connection with criminal matters. None of those constitutional rights were observed by the kidnappers and transporters.

As a consequence of those violations, which violate both the mexican Constitutional Law, as well as International Law, the corresponding Mexican authorities have already initiated a criminal action proceedings in accordance with mexican law, against the intellectual and material perpetuators of the illegal kidnapping and transfer to the United States of Dr. Humberto Alvarez Machain, because it is deemed that in such a case, the crimes of kidnapping, false imprisonment and criminal association were committed. In due time, the Mexican Government will request from the Government of the United States of America the extradition of the individuals involved in the perpetration of those crimes, if they could be found in territory of the United Stated of America, in accordance with the terms of the existing Extradition Treaty in both Countries.

The Embassy of Mexico, upon specific instructions from its Government, requests to the Department of State its intervention before the corresponding authorities so that Dr. Humberto Alvarez Machain be returned back to Mexico in order to be investigated regarding his probable participation in the crimes whose investigation and prosecution correspond to the Mexican Government. The Mexican Government respectfully requests the collaboration of the Government of the United States of America in order that such individual be tried and sentenced in Mexico with absolute respect to the mexican laws in connection with the crimes in which Dr. Alvarez Machain has participated.

The Embassy of Mexico avails this opportunity to renew to the Department of States the assurances of its consideration.

Washington, D.C., May 16, 1990.

APPENDIX B-1

No. 0419

La Embajada de México saluda atentamente al Departamento de Estado y se permite hacer referencia al secuestro en territorio mexicano y traslado ilegal a Los Estados Unidos del Dr. Humberto Alvarez Machain.

El gobierno de México considera que el secuestro y traslado de territorio mexicano al de los Estados Unidos de América del Dr. Alvarez Machain, se realizó con el conocimiento de algunas personas al servicio del gobierno de los Estados Unidos y en contravención al procedimiento establecido en el Tratado de Extradición vigente entre ambos países.

De la misma manera el procedimiento seguido por los captores y trasladantes del Dr. Alvarez Machain, fué violatorio de los artículos 14 y 16 de la Constitución Política de los Estados Unidos Mexicanos, que son los que establecen las guarantías del debido procedimiento legal para las detenciones y de la audiencia en los procesos de carácter penal. Ni una ni otra de tales garantías fué respetada por los captores y trasladantes.

Como consecuencia de estas violaciones, que afectan tanto al derecho constitucional mexicano como al derecho internacional, las autoridades mexicanas competentes ya han iniciado los procedimientos penales que en México deben llevarse a efecto, contra los autores intelectuales y materiales del secuestro y traslado ilegal a los Estados Unidos del Dr. Humberto Alvarez Machain, ya que se considera que en el caso se han dado los delitos de privación ilegal de la libertad en forma de secuestro y asociación delictuosa, y en su oportunidad el gobierno mexicano solicitará al gobierno de los Estados Unidos de América la extradición de las personas involucradas en la comisión de dichos delitos y que se encuentren en territorio de los

Estados Unidos de América, conforme al Tratado de Extradición vigente entre ambos países.

En consecuencia, la Embajada de México siguiendo instrucciones precisas de su gobierno, solicita al Departamento de Estado su intervención ante las autoridades competentes, a efecto de que sea devuelto el Dr. Humberto Alvarez Machain, para que se someta a la investigación sobre su posible participación en delitos cuya investigación y persecución corresponden al gobierno mexicano, por lo que se exhorta respetuosamente al gobierno norteamericano para que preste su colaboración, para que dicho individuo sea juzgado y sentenciado con respeto absoluto a las leyes mexicanas, respecto de aquellos delitos en los que haya participado el citado Dr. Alvarez Machain.

La Embajada de México aprovecha la oportunidad para renovar al Departamento de Estado, las seguridades de su más atenta consideración.

Washington, D.C. 16 de mayo de 1990.

Al Departamento de Estado
Washington, D.C.

APPENDIX C

UNOFFICIAL TRANSLATION

July 19, 1990
Washington, D.C.

Excellency:

On behalf of my Government, I have the honor of referring to the Extradition Treaty between the United Mexican States and the United States of America, in order to inform Your Excellency's Government that Mexican authorities request the provisional detention, for extradition purposes, of HECTOR BERRELLEZ or ARTURO E. BERRELLEZ, according to Articles 1 and 2, and especially Article 11, of the above Treaty. The reason for this request is that the above mentioned person is probably responsible for the crime of Illegal Deprivation of Liberty in its Modality of kidnapping. This crime fits into part 1 of the 2nd Article and the subparagraph number 4 of the Appendix to the Treaty. This crime was committed against Doctor Humberto Alvarez Machain for which reason criminal proceedings were filled against HECTOR BERRELLEZ or ARTURO E. BERRELLEZ which resulted in Penal Action 118/90 before the First Criminal Judge of the Federal District in the State of Jalisco, and a warrant of arrest issued on July 9, 1990.

The above detention is requested following the request to the Embassy by the Mexican Secretariat of Foreign Relations in its official letter 7 5044, dated July 16, 1990. The pertinent sections of said note are transcribed below by the undersigned—the Ambassador of Mexico to the United States of America—as if they were his own writing, for whatever legal purposes they may be needed:

". . . The Office of the Attorney General of Mexico sent note DAI/666/90, dated July 13, 1990, with basis on the Articles 102 and 119 of the Political Constitution of the United Mexican States, Article 11 of the Extradition

Treaty currently in force between the United Mexican States and the United States of America, and on Article 2, part VII, Article 9, part II, of the Internal Regulations of the Mexican Office of the Attorney General, Article 4 of the Penal Code for the Federal District in Common Law Matters and for the Republic in Federal Law Matters, and lastly in the 3rd Article of the International Extradition Act, requesting that, through diplomatic channels, the provisional detention, for extradition purposes, of ANTONIO GARATE BUSTAMANTE or JOSE ANTONIO GARATE BUSTAMANTE and HECTOR BERRELLEZ or ARTURO E. BERRELLEZ be solicited. The First Criminal Judge of the Federal District in the State of Jalisco ordered the apprehension of these men on July 9, 1990 according to the Penal Action number 118/90, for their probable responsibility in the crime of kidnapping. The crime is sanctioned by the Articles 336, parts I, II, and V in relation to the stipulation 13, parts I, IV, and V of the Penal Code for the Federal District in Common Law Matters and for the Republic in Federal Law Matters.

The request is based fundamentally on Article 11 of the Treaty mentioned, considering also pertinent part I of Article 2 and the subparagraph number 4 of the Appendix. The crime mentioned above is of a serious nature since it is punishable in both countries with the total loss of freedom for more than one year.

The Office of the Attorney General of Mexico has named the delinquent acts of the accused who are now found to be avoiding the Mexican Justice in the following way:

On April 2, 1990, Doctor Humberto Alvarez Machain was in his medical consulting room situated in 1853 Mexicaltzingo, in the city of Guadalajara, Jalisco. Shortly after he had seen one of his patients, with the surname of Rodriguez, five men came into his office holding guns. These men who passed themselves as police agents, de-

tained Alvarez Machain while at the same time disconecting the telephone cables.

Immediately after, the accused drove the victim to Silao, Guanajuato, and from there they drove to the city of Leon of the same state so as to depart by airplane the next day, April 3, 1990, to El Paso, Texas, United States of America. The airplane used, which was brown with stripes of a darker brown, was a Turbo Commander, Model 810, with registration number XA-PEW, for 6 people, and was property of an agency denominated Aerojalisco. The plane was hired out to the kidnappers who followed the route Guadalajara—Leon—Cuidad Juarez—Guadalajara. Previous authorization for landing at the airport had been granted and the accused landed at the airport of El Paso, Texas, United States of America.

On April 28, 1990, Jorge Covarrubias Manrique, before the Agent of the Public Federal Ministry, admitted to having participated in the kidnapping of Doctor Alvarez Machain. He also admitted to have been an operative team member of the Drug Enforcement Administration (D.E.A.), ordered through ANTONIO GARATE BUSTAMANTE or JOSE ANTONIO GARATE BUSTAMANTE by HECTOR BERRELLEZ or ARTURO E. BERRELLEZ.

In the declaration presented by ANTONIO GARATE BUSTAMANTE or JOSE ANTONIO GARATE BUSTAMANTE, before the Tribunal Judge of the District of the United States of America, in the case number CR87422(F)-ER, on May 25, 1990, he declared that the kidnapping of Humberto Alvarez Machain was approved by HECTOR BERRELLEZ, who admitted to this before the same authority.

From the above mentioned facts it is presumed that ANTONIO GARATE BUSTAMENTE or JOSE ANTONIO GARATE BUSTAMANTE prepared the the kidnapping of Doctor Humberto Alvarez Machain, which took place on April 2. 1990 in the city of Guadalajara, Jalisco, in order to later transfer him to the United States of America. It is also

presumed, according to testimony, that he did it with the approval of HECTOR BERRELLEZ who was superior to him in rank at the Drug Enforcement Administration (D.E.A.). For these reasons, the First Criminal Judge of the District in Penal Matters for the State of Jalisco, after relating these events with the elements of conviction reached by the Public Federal Ministry in the verification of the crime, considered that ANTONIO GARATE BUSTAMANTE of JOSE ANTONIO GARATE BUSTAMANTE and HECTOR BERRELLEZ or ARTURO E. BERRELLEZ responsible for the illicit crime of ILLEGAL DEPRIVATION OF LIBERTY IN ITS MODALITY OF KIDNAPPING.

It is known that the above mentioned persons have been summoned for the judgement instituted against the victim, before the tribunal Judge of the District of the United States for the Central District of California. Therefore, for the localization of the above mentioned persons, we inform you that they are currently residing in, or around, Los Angeles, California.

For the purpose of identification, the Office of the Attorney General of Mexico submits the following information of ANTONIO GARATE BUSTAMANTE or JOSE ANTONIO GARATE BUSTAMANTE and annexes a photocopy of his photograph.

PLACE OF BIRTH:	AGUA CALIENTE, SINALOA, MEXICO
MARITAL STATUS:	MARRIED
AGE:	51 YEARS OLD
DATE OF BIRTH:	MAY 28, 1939
HAIR:	INSERTION OF CIRCULAR HAIR BETWEEN STRAIGHT AND ABUNDANT, GREYING BLACK
FOREHEAD:	LARGE
EYES:	BROWN
NOSE:	LARGE, DEEP, STRAIGHT, SLIGHTLY ELEVATED AND HORIZONTAL BASE
MOUTH:	SMALL WITH LARGE LIPS
CHIN:	VERTICAL INCLINATION, MEDIUM
EARS:	HEIGHT, MEDUIM WIDTH CONTOUR OF LOBE AT RIGHT
COMPLEXION:	ANGLE
BODY STRUCTURE:	WHITE
WEIGHT:	MEDIUM
HEIGHT:	APPROXIMATELY 78 KILOS 1.73 METERS

The following information of HECTOR BERRELLEZ or ARTURO E. BERRELLEZ is also submitted:

APPROXIMATE AGE:	43 TO 45 YEARS OLD
HEIGHT:	1.75 TO 1.78 METERS
BODY STRUCTURE:	ROBUST
HAIR:	CURLY, GREYING, AND SHORT
COMPLEXION:	WHITE
EYES:	LIGHT BROWN
EYELASHES:	CURLY
EYEBROWS:	ABUNDANT
NOSE:	STRAIGHT
MOUTH:	REGULAR
FACE:	ROUND
PARTICULAR SIGNS:	ON BOTH CHEEKS HE HAS SCARS FROM SMALLPOX OR ACNE.

The request for provisional detention is based on what is established by the Extradition Treaty, and therefore, the Office of the Attorney General of Mexico grants the promise of formalizing the application for extradition of ANTONIO GARATE BUSTAMANTE or JOSE ANTONIO GARATE BUSTAMANTE and HECTOR BERRELLEZ or ARTURO E. BERRELLEZ, within the time limit established by the Treaty in reference and will start running when United States authorities succeed in the apprehension, during which lapse we will continue to send personal data for better identification and faster localization.

In view of the considerations of law and of fact that the Social Federal Representation expresses, and because this petition satisfies the requisites stated in the Extradition Treaty, currently in force between our two countries, and also satisfies the requisites established by the International Extradition Act, this Ministry of Foreign Affairs, with basis on part IV of article 15 of its Bylaws, requests your intervention to the effect that procedure of the extradition of the accused may begin. We would appreciate being informed of the steps taken with respect to this request.

As a result, and since the above transcript indicates the events and facts related to the crime of which HECTOR BERRELLEZ or ARTURO E. BERRELLEZ is accused of, provides their description and whereabouts in the United States, promises to formalize the extradition request, declares the existence of a warrant of arrest issued by the competent judicial authority against him, I wish to submit to Your Excellency this information, which I assure is true, and request the provisional detention in reference.

I wish to assure Your Excellency of my personal commitment to formalize the extradition request within the sixty day period, starting from the date on which the provisional detention, for extradition purposes, of the above mentioned person is confirmed. For which reason, I would appreciate being informed, as soon as possible, of the date when the sixty day period mentioned in the Extradition Treaty starts running.

The provisional detention is requested without detriment that by the established conducts in the Treaty it be possible to perfect a different application of the for crimes other than the one which is foundation of this request."

In view of the above, Mr. Secretary, and considering that this petition abides by the terms of the Extradition Treaty currently in force between the United Mexican States and the United States of America, I request your kind intervention in ensuring that the competent U.S. authorities, including the U.S. judicial authorities, take the necessary measures to detain HECTOR BERRELLEZ or ARTURO E. BERRELLEZ for his subsequent extradition, from the United States of America to Mexico.

In thanking Your Excellency in advance for your valuable assistance concerning this request, I take this opportunity to renew to Your Excellency the assurance of my highest and most distinguished consideration.

Gustavo Petricioli
Ambassador

His Excellency
James A. Baker, III
Secretary of State
Washington, D.C.

APPENDIX C-1

Washington, D.C., a 19 de julio de 1990.

Señor Secretario:

En nombre de mi Gobierno, tengo a honra referirme al Tratado de Extradición suscrito entre los Estados Unidos Mexicanos y los Estados Unidos de América, para solicitar formalmente al Gobierno de Vuestra Excelencia, con base en los Articulos 1, 2 y, en particular, con fundamento en el Articulo 11 del citado tratado, la detención provisional con fines de extradición del señor HECTOR BERRELLEZ O ARTURO E. BERRELLEZ a quien las autoridades mexicanas reclaman por su probable responsabilidad en la comisión del delito de privación ilegal de la libertad con carácter de secuestro mismo que encaja dentro de la fracción l del Artículo 2° y el inciso 4) del Apéndice del Tratado de referencia, delito cometido en agravio del C. Doctor Humberto Alvarez Machain, por cuya razón se le sigue la causa penal numero 118/90 ante el Juez Primero de Distrito en Materia Penal en el Estado de Jalisco, de la que resultó orden de aprehensión en contra del reclamado, fechada el 9 de julio de 1990.

Lo anterior lo manifiesto a usted en virtud de la gestión que me encomienda la Secretaria de Relaciones Exteriores del Gobierno Mexicano, mediante el oficio numero 7 5044 de fecha 16 de julio de 1990, cuyo texto, para todos los efectos legales a que haya lugar, el que suscribe, Embajador de Mexico ante los Estados Unidos de América, hace suyo y transcribe en su parte conducente a continuación:

"La Procuraduria General de la República, mediante oficio DAI-666/90, fechado el 13 del mes en curso solicita, con base en los articulos 102 y 119 de la Constitución Politica de los Estados Unidos Mexicanos, en el articulo 11 del Tratado de Extradición celebrado entre nuestro pais y los Estados Unidos de América, y en los articulos 2 fracción VII, 9 fracción 11 de la Ley Orgánica de la Pro-

curaduría General de la República, 4 del Código Penal para el Distrito Federal en Materia del Fuero Común y para toda la República en Materia del Fuero Federal y por ultimo en el articulo 3° de la Ley de Extradición Internacional, que por los conductos diplomáticos se requiera al Gobierno de los Estados Unidos de América, la detención provisional con fines de extradición de ANTONIO GARATE BUSTAMANTE o JOSE ANTONIO GARATE BUSTAMANTE y HECTOR BERRELLEZ o ARTURO E. BERRELLEZ, contra de quienes el Juez Primero de Distrito en Materia Penal en el Estado de Jalisco el 9 del mes y año en curso, en la causa penal número 118/90, libró orden de aprehensión en contra de los reclamados, por su probable responsabilidad en la comisión del delito de privación ilegal de la libertad con carácter de secuestro, ilícito previsto y sancionado en los artículos 366 fracción I, II y V en relación con el precepto 13 fracciones I, IV y V del Código Penal para el Distrito Federal en Materia del Fuero Común y para toda la Repúblicaa en Materia del Fuero Federal.

"La petición se fundamenta básicamente en el artículo II del Tratado invocado, considerándose aplicable asimismo, la fracción I del articulo 2° y el inciso 4) de su Apéndice, ya que el delito imputado a los reclamados es punible en ambos países, con una pena de privación de la libertad mayor de un año.

"La Procuraduría General de la Republica efectúa una relación de hechos delictuosos imputados a los reclamados, quienes se encuentran prófugos de la Justicia Mexicana, en la forma siguiente.

"El 2 de abril de 1990, el C. Doctor Humberto Alvarez Machain, se encontraba en el interior del consultorio médico de su propiedad ubicado en Mexicaltzino 1853, en la ciudad de Guadalajara, Jalisco, cuando minutos después de haber atendido a una paciente de apellido Rodríguez, se presentaron cinco personas que portaban armas, mismas

que detuvieron al citado Alvarez Machain, ostentándose como elementos de cuerpos policiacos, arrancando al mismo tiempo los cables telefónicos.

"Posteriormente, estas personas condujeron al secuestrado por via terrestre al Municipio de Silao, Estado de Guanajuato, y de allí a la ciudad de León en el mismo Estado, para al día siguiente, o sea el 3 de abril de 1990, trasladarlo por vía aérea de esa ciudad a El Paso, Texas, Estados Unidos de América, habiéndose realizado el vuelo a bordo de un avión Turbo Comander, Modelo 810, color café claro con franjas color café obscuro, matriculo XA-PEW de seis plazas, propiedad de la empresa aérea denominada Aerojalisco, quien prestó el servicio solicitado por los secuestradores cubriendo la ruta Guadalajara-León-Ciudad Juárez-Guadalajara, habiéndose introducido, previa autorización de internamiento, a El Paso, Texas, Estados Unidos de América, aterrizando en el aeropuerto de ese lugar.

"Por declaración vertida por el C. Jorge Covarrubias Manrique, ante el Agente del Ministerio Público Federal, el 28 de abril de 1990, reconoció haber participado en el secuestro del Doctor Alvarez Machain, y que el mismo fue un operativo de la Drug Enforcement Administration (D.E.A), ordenado a través de ANTONIO GARATE BUSTAMANTE o JOSE ANTONIO GARATE BUSTAMANTE por el señor HECTOR BERRELLEZ o ARTURO E. BERRELLEZ.

"Mediante declaración emitida por ANTONIO GARATE BUSTAMANTE o JOSE ANTONIO GARATE BUSTAMANTE, ante el Juez del Tribunal de Distrito de los Estados Unidos de América, para el Distrito Central de California, en el caso número CR87422(F)-ER, el 25 de mayo de 1990, declaró que el secuestro de Humberto Alvarez Machain, por él dirigido, fue aprobado por HECTOR BERRELLEZ, quien ante la misma autoridad confirmó este dicho.

"De los hechos antes referidos, se desprende que presuntivamente ANTONIO GARATE BUSTAMANTE o JOSE

ANTONIO GARATE BUSTAMANTE acordó y preparó el secuestro del Doctor Humberto Alvarez Machain, y el 2 de abril de 1990, lo llevó a cabo en la ciudad de Guadalajara, Jalisco, para posteriormente trasladarlo a los Estados Unidos de América, todo ello con la aprobación de HECTOR BERRELLEZ, en su calidad de superior jerárquico dentro de la Drug Enforcement Administration (D.E.A.), por lo que la C. Juez Primero de Distrito en Materia Penal en el Estado de Jalisco, al relacionar éstos con los elementos de convicción aportados por el Ministerio Público Federal en la averiguación de la comisión del delito, consideró que los CC. ANTONIO GARATE BUSTAMANTE o JOSE ANTONIO GARATE BUSTAMANTE y HECTOR BERRELLEZ o ARTURO E. BERRELLEZ, como probables responsables en la comisión del delito de PRIVACION ILEGAL DE LA LIBERTAD CON CARACTER DE SECUESTRO.

"Se tiene conocimiento de que los reclamados actualmente comparecen en el juicio instruído en contra del secuestrado, ante el Juez del Tribunal de Distrito de los Estados Unidos para el Distrito Central de California, por lo cual, para la localización de éstos, se proporciona como su paradero la ciudad de Los Angeles en ese Estado de California.

"Para efectos de identificación, la Procuraduria General de la República proporciona la media filiación de ANTONIO GARATE BUSTAMANTE o JOSE ANTONIO GARATE BUSTAMENTE y remite fotocopia simple de su fotografía.

LUGAR DE NACIMIENTO	AGUA CALIENTE, SINALOA, MEXICO
ESTADO CIVIL	CASADO
EDAD	51 AÑOS
FECHA DE NACIMIENTO	28-05-39
CABELLO	INSERCION DEL PELO CIRCULAR ENTRE LACIO Y ABUNDANTE, NEGRO ENTRECANO
FRENTE	GRANDE
OJOS	CAFE
NARIZ	GRANDE, PROFUNDA, RECTILINEA LIBERAMENTE ELEVADA Y BASE HORIZONTAL
BOCA	CHICA CON LABIOS GRUESOS
MENTON	INCLINACION VERTICAL, ALTURA MEDIANA, ANCHURA MEDIANA
OREJAS	CONTORNO DEL LOBULO EN ESCUADRA
TEZ	BLANCA
COMPLEXION	MEDIANA
PESO	78 KILOS APROXIMADAMENTE
ESTATURA	1.73 METROS

Asimismo, proporciona la media filiación de HECTOR BERRELLEZ o ARTURO E. BERRELLEZ:

EDAD APROXIMADA	43 A 45 AÑOS
ESTATURA	1.75 a 1.78 METROS
COMPLEXION	ROBUSTA
CABELLO	ONDULADO, ENTRECANO Y RECORTADO
TEZ	BLANCA
OJOS	CAFE CLARO
PESTAÑAS	RIZADAS
CEJAS	POBLADAS
NARIZ	RECTA
BOCA	REGULAR
CARA	REDONDA
SEÑAS PARTICULARES	EN AMBAS MEJILLAS TIENE CICATRICES DE VIRUELA O ACNE

"Por otra parte y en cumplimiento de lo previsto en el Tratado de Extradición invocado, la Procuraduría General de la República otorga la promesa de formalizar la SOLICITUD DE EXTRADICION de los señores ANTONIO GARATE BUSTAMANTE o JOSE ANTONIO GARATE BUSTAMANTE y HECTOR BERRELLEZ o ARTURO E. BERRELLEZ, dentro del término establecido por el Instrumento Internacional referido, contado a partir de la fecha en que las autoridades estadounidenses logren su detención, independientemente de aportarse mayores datos personales para su mejor identificación y más pronta localización.

En virtud de las consideraciones de derecho y de hecho que expresa la Representación Social Federal ya invocada, y en razón de que se satisfacen los requisitos del Tratado de Extradición celebrado entre ambos paises y satisface además lo establecido en la Ley de Extradición Internacional; por lo anterior, esta Cancillería con base en la fracción IV, articulo 15 del Reglamento Interior de la misma, solicita su intervención para

efecto de que se inicie el procedimiento de extradición de los requeridos, agradeciendo se nos informe respecto de los avances y gestiones que se efectúen al respecto."

Por lo anterior, toda vez que en el documento que arriba transcribo se expresan actos y hechos relacionados con el delito que se imputa al reclamado, su descripción y su paradero en territorio estadounidense, asi como la promesa de formalizar la solicitud de extradición respectiva y la existencia de una orden de aprehensión librada por autoridad judicial competente en su contra, hechos que me permito presentarlos como veridicos que son ante Vuestra Excelencia, solicito la presente detención provisional.

Hago mía la promesa de formalizar la solicitud de extradición y que dentro del término de sesentas días, a partir de la fecha en que se me confirme la detención provisional de sujeto reclamado, presentaré en sus términos, la solicitud formal correspondiente; por lo que le agradeceré comunicarme, a la brevedad posible, la fecha precisa en que comience a correr el plazo a que se hace mención en el Tratado de referencia.

La detención provisional se solicita sin perjuicio de que por los conductos establecidos en el propio Tratado se pueda perfeccionar solicitud distinta respecto del presunto extraditado por delitos distintos a los que son fundamento de esta solicitud.

Por loarriba se0tnalado, Señor Secretario, al encontrarse la petición que hago, deqntro de los supuestos descritos fpor el Tratado de Extradición vigente entre nuestros dos países, ruego a Usted su amable concurso para obtener de las autoridades estadounidenses competentes en la materia, incluso de las judiciales, el que se tomen las medidas necesarias para obtener la aprehensión, con fines ulteriores de extradición desde los Estados Unidos de América a México, del reclamado HECTOR BERRELLEZ o ARTURO E. BERRELEZ.

Al agradecer a Vuestra Excelencia, anticipadamente, su valioso concurso en la gestión solicitada, hago propicia la ocasión para renovarle las seguridades de mi más alta y distinguida consideración.

Gustavo Petricioli
Embajador

Al Excelentisimo Señor
James A. Baker III,
Secretario de Estado,
Ciudad